

EXHIBIT 2

1 UNITED STATES DISTRICT COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 THE AUTHORS GUILD, INC., et)
4 al.,) Civil Action No.
5 Plaintiffs,) 05-CV-8136 (DC)
6 vs.)
7 GOOGLE, INC.,)
8 Defendant.)
-----)

9 Thursday, April 19, 2012
10 9:08 a.m.

11
12 Confidential Videotaped Deposition
13 of PAUL AIKEN, held at the offices of
14 Milberg, LLP, One Penn Plaza, New York,
15 New York, pursuant to Rule 30 (b)(6)
Notice, before Otis Davis, a Notary
Public of the State of New York.

16
17
18
19
20
21
22 .
23
24
25 (#442577)

1 Q. Correct.

2 A. My belief is that it will search within
3 the text of the actual book as well as within the
4 title and it will return results responsive to the
5 search terms, whether or not the terms are in the
6 title.

7 Q. Is there any way to create a searchable
8 database of books without scanning the text of books
9 to convert them into digital form?

10 MR. BONI: Object to form.

11 A. I don't know.

12 Q. Are you aware of any way to enable full
13 text searching of a book without making a copy of the
14 entire book?

15 MR. BONI: It's the same question.
16 Object to form.

17 A. Repeat the question, please.

18 Q. Sure.

19 Are you aware of any way to create a
20 searchable index of books without scanning the
21 complete copy of the books included within that
22 index?

23 MR. BONI: Objection.

24 THE WITNESS: Answer?

25 MR. BONI: You can answer.

1 Q. You can answer.

2 A. No.

3 Q. Prior to Google Books, were there any
4 searchable databases of the text of books?

5 MR. BONI: Object to form. These
6 questions all lack foundation.

7 A. Yes.

8 Q. What were those databases?

9 A. Amazon.com had such a database, others
10 may have existed, I don't know the timing of Internet
11 Archive's database, Yahoo! and Microsoft also were
12 engaged in creating such databases.

13 Q. Did Microsoft ever have a database
14 available to users that allowed for searching the
15 full text of books?

16 MR. BONI: Object to form.

17 A. I believe it did.

18 Q. Do you know when that service was first
19 made available to users?

20 A. No, I don't.

21 Q. Other than Amazon, Internet Archive,
22 Yahoo! and Microsoft, are you aware of any other
23 databases that allowed for the full text searching of
24 books?

25 A. Barnesandnoble.com. That's all I can

1 Today, do you consider there to be a
2 potential market for including excerpts of books in
3 book reviews?

4 A. No.

5 Q. In your view, there is no such potential
6 market because the inclusion of quotations in book
7 reviews is sanctioned by law?

8 A. Sanctioned by both I would say free
9 speech and fair use grounds.

10 Q. Earlier in your testimony, you also
11 indicated that sometimes people will discover books
12 in bookstores by browsing them; is that right?

13 A. Yes.

14 Q. And when I go into my neighborhood
15 bookstore, typically books are available on counters
16 for me to pick up and look through; is that right?

17 A. That's right.

18 Q. Rather than being, for example, like in a
19 pharmacy behind the counter where I would only be
20 able to see the cover but not look to see what was
21 inside?

22 A. Generally, bookstores make books
23 available for browsing.

24 Q. Do you have a view as to whether making
25 books available for browsing helps or hurts the sale

1 of books?

2 A. You're talking about physical bookstores?

3 Q. Yes, physical bookstores.

4 A. Yes, I do.

5 Q. What is your view?

6 A. My view is that it helps the sale of
7 books.

8 Q. Why is that?

9 A. Particularly in physical bookstores
10 holding the book, flipping through the pages, getting
11 a sense for the book makes a reader more likely to
12 buy a book, particularly one from a little known
13 author.

14 Q. Is that because sometimes the reader gets
15 interested by seeing what's inside the book?

16 MR. BONI: Object to form.

17 A. Holding the book, reading it makes it
18 interesting and you find the content interesting and
19 you may want to purchase it.

20 Q. Amazon also has a feature that allows you
21 to browse books electronically; is that right?

22 A. Yes. They have the Search Inside the
23 Book.

24 Q. Is it likewise your view that the Search
25 Inside the Book feature on Amazon serves to

1 facilitate the sales of at least some types of books?

2 A. Amazon representatives say that it's true
3 and I believe it's true; publishers also say that it
4 helps the sale of books.

5 Q. A number of publishers have entered into
6 the Partner Program with Google and have made certain
7 pages of works available on Google Books; is that
8 right?

9 A. That's right.

10 Q. Do you have a view as to whether the
11 ability to see a few pages of the book on Google
12 Books helps or hurts the sale of those books?

13 A. I believe it helps the sale of
14 commercially available books.

15 Q. Was there a period of time during which
16 there was a clearinghouse for licenses for libraries
17 to make archival digital copies of books?

18 A. I don't believe so.

19 Q. Has The Authors Guild ever had any role
20 in providing a mechanism for libraries to make
21 archival digital copies?

22 A. Well, let's see -- well, The Authors
23 Guild has been involved, my predecessors and the
24 lawyers at the Guild who preceded me, in legislative
25 efforts to -- under Section 108 of the Copyright Act

1 physical copy of the member's book and creating a
2 digital image file from it?

3 A. Yes. The Kaleidoscope Software did
4 involve that.

5 Q. Who paid for that digital image file to
6 be created?

7 A. Kaleidoscope Software, which became known
8 as 2XL almost immediately.

9 Q. Did Kaleidoscope Software receive any
10 compensation in any form for having created that
11 digital file?

12 A. Well, it was part of a package. By
13 making -- creating the digital file for the -- it was
14 actually the digital template for the printing of
15 print-on-demand books. Part of the agreement was
16 that the book would then be marketed through 2XL's
17 program.

18 Q. And 2XL would receive some share in the
19 revenues from the sale of those books; is that
20 correct?

21 A. That's correct.

22 Q. What share of the revenues did 2XL
23 receive?

24 A. I can't recall.

25 Q. Is that the current instantiation of the

1 Back In Print Program?

2 A. Substantially. Kaleidoscope became 2XL,
3 which changed its name to iUniverse, and then there
4 has been some acquisitions that have -- now Author
5 Solutions is the owner of essentially this in-print
6 of reprinted formally out-of-print books.

7 The things that have changed since the
8 inception of the program is there was at some point
9 an amendment to the contract, which slightly changed
10 the royalty rate, I can't remember what it was, what
11 it changed from to, with the intention of having a
12 substantially lower retail price.

13 Other changes have been that originally
14 the books were available in trade paperback format,
15 now they can be available as hard covers, some
16 members have chosen to make their books available as
17 e-books through the program.

18 Q. So let me see if I understand how it
19 works. An author provides a physical copy of his or
20 her book to iUniverse; is that right?

21 A. Right.

22 Q. If I refer to the entity that's currently
23 making the digital files and providing these services
24 as iUniverse, will you understand what I'm talking
25 about?

1 A. Yes.

2 Q. iUniverse then makes a digital file from
3 the physical copy, correct?

4 A. That's right.

5 Q. Where is that digital file stored?

6 A. That's a digital image file that is
7 stored at -- it would be at Ingram's -- there was
8 probably a copy retained by iUniverse, but the
9 production copy is held with Ingram's Lightning
10 Source program.

11 Q. What security measures are put into place
12 to protect those digital files?

13 A. Ingram's Lightning Source program is the
14 leading industry provider of these services. I don't
15 specifically know, but it has commercial grade
16 security that I'm sure that all major publishers have
17 found satisfactory, to my knowledge.

18 Q. Have The Authors Guild ever performed any
19 audit of the security measures that are in place at
20 Ingram?

21 A. No. But these are digital image files.
22 These are not digital text files.

23 Q. A digital image file can be turned into a
24 digital text file, correct?

25 A. Yes; in fact, Google does that.

1 Q. Through the application of OCR?

2 A. Right.

3 Q. Have you ever been made aware of the
4 results of any security audit performed relating to
5 the storage of these digital files by Ingram?

6 A. No.

7 MS. DURIE: Let me have marked as the
8 next exhibit a document titled "Authors Guild
9 Backinprint.com On-Demand Book Application."

10 (Aiken Exhibit 8, Application form to
11 participate in backinprint.com program, marked for
12 identification, as of this date.)

13 Q. Do you recognize what has been marked as
14 Exhibit 8?

15 A. Yes. This is an application form to
16 participate in the backinprint.com program.

17 Q. This is a form that was prepared by The
18 Authors Guild, correct?

19 A. Correct.

20 Q. And The Authors Guild makes this form
21 available to its members; is that right?

22 A. That's right.

23 Q. Does it make this form available to its
24 members on its Web site?

25 A. I believe so, but I'm not sure.

1 Q. Does The Authors Guild make any
2 recommendations to its members regarding whether some
3 portion of a work should be browsable in order to
4 facilitate sales of the work?

5 A. We do so in this application form I
6 believe somewhere.

7 Q. What recommendation does The Authors
8 Guild make to its members in that regard?

9 A. I believe --

10 Q. And if it helps, I can direct you to page
11 No. 9 at the bottom.

12 A. Thank you.

13 Yes. We recommend that authors make the
14 first chapter of their book available.

15 Q. So The Authors Guild recommends to
16 authors to make the first chapter of the author's
17 book available for browsing online; is that correct?

18 A. Yes, in conjunction with the Back In
19 Print Program.

20 Q. Why does The Authors Guild make that
21 recommendation?

22 A. Because we have been told and believe
23 that allowing a book to be browsed in this way
24 promotes the sale of the book.

25 Q. How would a potential reader typically

1 term for these sorts of programs?

2 Q. Correct.

3 A. Yes. I believe there would be -- I
4 believe there would have to be a conversion to
5 digital text, something that hadn't occurred to me
6 until I noticed that it appeared in the last few days
7 that Back In Print books were not available in -- did
8 not seem to be available in Search Inside the Book
9 programs.

10 Q. Do you know whether an author who is
11 making his work available through Back In Print can
12 pay an additional \$75 to iUniverse in order to have a
13 digital text file created and included within the
14 Barnes & Noble See Inside the Book feature?

15 A. The only knowledge about that is what has
16 been presented to me today.

17 Q. Is that likewise true with respect to the
18 Amazon See Inside the Book feature?

19 A. Yes.

20 Q. Now, with respect to the Amazon Search
21 Inside the Book feature, authors do not receive any
22 compensation when portions of their book are shown in
23 response to search requests, correct?

24 A. We're talking about the -- are we talking
25 generally in the Amazon program or are we talking

1 about the iUniverse Back In Print Program?

2 Q. Generally, Amazon's Search Inside the
3 Book.

4 A. Yes. My understanding is -- no. Authors
5 generally do not receive compensation for their books
6 being shown in Search Inside the Book with Amazon.

7 Q. And authors likewise do not typically
8 give specific permission for their works to be shown
9 in the Amazon Search Inside the Book program but
10 publishers do; is that correct?

11 A. Typically, authors have in their
12 contracts with their publishers a clause allowing the
13 publisher to prevent portions of the text to be used
14 to promote sales of the book.

15 So the author licenses or includes that
16 right in the license to the publisher, and then the
17 publisher authorizes in some cases Amazon, Google, or
18 Barnes & Noble to make displays.

19 Q. Can authors opt out of the Amazon Search
20 Inside the Book program?

21 A. I believe they can through their
22 publishers.

23 Q. Has The Authors Guild made any
24 recommendations to its members about whether to opt
25 out of the Amazon Search Inside the Book program?

1 used, over books not in the program. Those figures
2 from Amazon should be taken with a grain of salt
3 because Amazon plays its cards very close to the
4 past. They would never provide information on the
5 types of books and how sales might be affected.

6 Publishers have also told me that it
7 increases sales, but they've often been skeptical
8 about how much and whether or not those figures are
9 in any way artificially affected by Amazon in
10 changing its search results within Amazon based on
11 whether or not it's in the Search Inside the Book
12 program. I don't know one way or another what may be
13 done behind the scenes.

14 Q. Do you think it's more likely than not
15 that Search Inside the Book on average has a net
16 positive effect on sales?

17 A. Yes.

18 Q. Would you agree that Search Inside the
19 Book has created a browsable bookstore?

20 MR. BONI: Object to form.

21 A. No.

22 MR. BONI: You can answer.

23 A. No.

24 MS. DURIE: Let me have marked as the
25 next exhibit a multipage document, the first page of